



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/161184

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance (MA), a telephonic hearing was held on November 11, 2014.

The issue for determination is whether the agency met its burden of proof to establish an overpayment of MA benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Eugene Bykhovsky
1733 North Farwell Avenue
Milwaukee, WI 53202-1805

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pahoua Vang, ESS

Ozaukee County Department of Social Services
121 W. Main Street
PO Box 994
Port Washington, WI 53074-0994

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.

2. On July 22, 2011 petitioner applied for MA and FS. He reported income in the home for [REDACTED] (Independence First (IF)) and [REDACTED] Jewish Campus) and that there were 4 persons in the home. See Exhibit 1.
3. On August 1, 2011 an interview was conducted for petitioner's MA. At that time petitioner reported that he was not working and that [REDACTED] was working part-time and receiving unemployment benefits (UC).
4. On August 2, 2011 the agency issued a request for verification to the petitioner. See Exhibit 2. The request was for verification of petitioner's identity, earned income for [REDACTED] (IF), and earned income for petitioner ([REDACTED]). The request also contained added text to "please provide ID for all household members – ex. Permanent resident cards". The due date for the requested verification was August 22, 2011.
5. On August 18, 2011 the agency received the identity verification for [REDACTED] Jr.
6. On August 22, 2011 the agency issued another request for verification to the petitioner. See Exhibit 3. The request was for verification of petitioner's identity, earned income for [REDACTED] (IF), and earned income for petitioner ([REDACTED]). The request also contained added text stating "although employment with [REDACTED] has ended, I still need verification that employment ended. I also need permanent residence cards for ALL household members – I only received [REDACTED] 12/21/93. Thank you." The due date for the requested verification was August 29, 2011.
7. On September 2, 2011 the agency received [REDACTED]'s IF paystub from August 26, 2011 and petitioner's verification of his end of employment with [REDACTED]. See Exhibit 4.
8. On September 6, 2011 the agency processed the information received on September 2 and confirmed the household benefits for MA using the income information from [REDACTED] at IF and UC.
9. On September 7, 2011 the agency confirmed that the household of 4 was open for MA without premiums effective September 1, 2011.
10. On September 20, 2011 the petitioner contacted the agency regarding FS. The agency processed this FS application and conducted an interview. The agency mailed the application summary to petitioner the next day.
11. On September 21, 2011 the agency issued a request for verification to petitioner. See Exhibit 5. The request was for petitioner's signature on the FS application and for [REDACTED] alien registration status. The due date for the requested verification was October 20, 2011.
12. On September 29, 2011 the agency received petitioner's signed MA/FS application. See Exhibit 6. The application reported earned income in the home from [REDACTED] (IF) and [REDACTED] (UC). The application also provided citizenship information for petitioner, [REDACTED] and [REDACTED] Jr.
13. On October 11, 2011 the agency processed the information received from petitioner on September 29 and confirmed the household for FS only.
14. On October 12, 2011 the agency issued a notice to petitioner stating that effective September 20, 2011 the household of 5 would receive \$240 in FS, and \$659 in FS effective October 1, 2011. See Exhibit 7.
15. On October 14, 2011 the agency confirmed MA for the household of 4, counting only earned income in the home from [REDACTED] (IF) and [REDACTED] (UC).
16. On November 9, 2011 the agency issued a notice of decision to petitioner stating that effective November 1, 2011 the household of 4 was open for MA without premiums. It also reminded petitioner of the income reporting requirements. See Exhibit 8.

17. On January 23, 2012 the agency issued a six month review form (SMRF) to petitioner in order for the agency to continue FS for petitioner in March. On January 31, 2012 the agency received the SMRF from petitioner. See Exhibit 9. The SMRF was sent back to the petitioner for completion of Section 5, "Has there been a change in other income?". On February 9, 2012 the agency received the completed SMRF indicating no changes in income. See Exhibit 10.
18. On February 15, 2012 the agency issued a request for verification to petitioner. See Exhibit 11. The request was for earned income for [REDACTED] (IF) and earned income for petitioner (Vladlen). The due date for the requested verification was February 24, 2012.
19. On February 24, 2012 the agency received the earned income verification for [REDACTED] [REDACTED] Vladlen). See Exhibit 12.
20. On February 28, 2012 the agency issued a notice of decision to petitioner stating that effective April, 2012 the 5 household members were not eligible for FS because the requested verification were not received. See Exhibit 13.
21. On March 16, 2012 the agency received earned income for [REDACTED] (IF) with paystub from 3/9/12. See Exhibit 14.
22. On April 11, 2012 the agency issued a notice of decision to petitioner stating that effective April 1, 2012 the household of 4 was open for MA without premiums. It also reminded petitioner of the income reporting requirements. See Exhibit 15. The only reported income was the earned income for [REDACTED] at IF.
23. On July 16, 2012 the agency issued a six month review form (SMRF) to petitioner in order for the agency to renew MA for petitioner in September. See Exhibit 16.
24. On August 2, 2012 the agency received the SMRF from petitioner. See Exhibit 17. It reported earned income for [REDACTED] from IF and from IRIS (start date of 4/1/12). The agency requested and received earned income verification for petitioner from IF (Exhibit 21) and Vladlen/IRIS (Exhibit 20), [REDACTED] from IF (Exhibit 19) and from IRIS/TMG (Exhibit 20), and [REDACTED] Jr. from Vladlen/IRIS (Exhibit 20).
25. On August 1, 2014 the agency reviewed the case for a possible overpayment.
26. On August 15, 2014 the agency issued two MA Overpayment Notices to petitioner advising of overpayments for November 2011 in the amount of \$244 due to recipient error (claim # [REDACTED]) and from December 1, 2012-September 30, 2013 in the amount of \$375.71 due to recipient error (claim # [REDACTED]).
27. On September 24, 2014 the agency revised one of the MA overpayment claims (claim # [REDACTED]) from \$375.71 to \$49. See Exhibit 29.

DISCUSSION

The Department may recover any overpayment of medical assistance (MA) that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the

recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. §49.497; see also [BadgerCare + Eligibility Handbook](http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm), §28.2, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

The MA recovery statute clearly provides for recovery of MA when a recipient fails to report income or assets which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income is subject to the recovery rights for the agency. However, the fact remains that petitioner failed to report income that, had it been reported, would have caused the petitioner to pay premiums for the MA. The overpayment now seeks repayment of those unpaid premiums.

Petitioner did not dispute the income or the calculations made for the overpayment, and has not rebutted the agency's evidence that either the adults or children owed premiums during the time periods in question. Therefore, I must find that the county agency correctly seeks to recover these benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency met its burden of proof to establish an overpayment of MA benefits in the amount of \$244 (claim # [REDACTED]) and \$49 (claim # [REDACTED]).

THEREFORE, it is

ORDERED

The petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

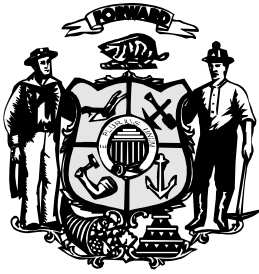
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of December, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 16, 2014.

Ozaukee County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability